

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5142 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHAKARIBEN RUPSING THAKOR

Versus

COMMISSIONER OF POLICE

Appearance:

Shri R.C. Kodikar for Shri Vijay H. Patel for petitioner
Shri Kamala Mehta, AGP for the respondents

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 04/11/96

ORAL JUDGEMENT

The petitioner-lady Shakariben Rupsingh Nathaji Thakor, has challenged the order of detention dated 21st June 1996 passed against her by the Commissioner of Police, Ahmedabad City. It is alleged that the petitioner is a bootlegger. During the period from 1993 to 1996, as many as 10 cases have been registered against her for the offence under the provisions of Bombay Prohibition Act, 1949. It is contended by the learned counsel that false cases have been registered against the petitioner at the time of election. It is submitted that even if it is assumed that the petitioner is a bootlegger, simply on that ground she cannot be detained under the provisions of Gujarat Prevention of Anti Social

Activities Act, 1985 (hereinafter referred to as "the PASA Act"). Learned counsel relied on the decision of the Apex Court in Piyush Kantialal Mehta v. Commissioner of Police, Ahmedabad City and anr., AIR 1989 SC 491. It is held by the Apex Court that simply because the petitioner is a bootlegger he or she cannot be preventively detained under the provisions of the PASA Act, unless as laid down under subsection 4 of sec.3 of the PASA Act, i.e., the activities of a bootlegger affect adversely or likely to affect adversely the maintenance of public order.

2. Rule was issued by the order of the Court dated 18th July 1996 returnable on 19th August 1996. No reply has been filed. However, it is opposed by Shri Kamal Mehta, learned AGP. Considering the facts of the case and in the light of the law laid down by the Apex Court, in my view the order of detention is not sustainable. I have gone through the material on record with the assistance of the learned counsel. In my view there is no material to indicate that the activities of the petitioner as a bootlegger has in any way adversely affected or likely to affect the maintenance of public order. Thus, in my view the order of detention is not sustainable. In view of the aforesaid this Special Civil Application is allowed. The order of detention dated 21.6.1996 is quashed and set aside. The petitioner shall be released forthwith if she is not required in any other case. Rule is made absolute.

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